

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.2686 OF 1984

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

JIGANSHU JAYANTILAL DAVE
VERSUS
OIL AND NATURAL GAS COMMISSION & ORS.

Appearance:

MR DC RAVAL for the Petitioner
MR JM THAKORE with MR RH MEHTA for Resp.No.3

Coram: S.K. Keshote,J
Date of decision:29/01/1997

C.A.V. JUDGMENT

Heard learned counsel for the parties.

2. The petitioner filed this petition and prayer has been made therein for quashing and setting aside the order dated 15th October 1983, annexure 'E', under which the order giving him appointment on the post of Assistant Technician (Production) was cancelled on the ground that he was declared medically unfit for the said post by Deputy Chief Medical Officer, Ahmedabad Project, Ahmedabad.

3. The facts of the case are that the respondents made an advertisement dated 7.1.83 inviting the applications for making appointment on 250 vacancies of Assistant Technician (Production). The petitioner, who fulfilled all eligibility, as prescribed, for the post aforesaid submitted his application in response to the said advertisement, to the respondent. The petitioner was called upon vide memo dated 12th May 1983 for interview, scheduled on 17th May 1983. The petitioner was selected for the post of Assistant Technician (Production) and he has been offered the appointment to the post under the order dated 29th September 1983. A copy of this order is on record of this Special Civil Application as annexure 'D'. One of the conditions of offer of appointment was that it is subject to production of certificate of medical fitness, except in case of exempted category, from the Deputy Chief Medical Officer, Oil & Natural Gas Commission, Ahmedabad. The petitioner presented himself for his medical examination before the Deputy Chief Medical Officer of the Commission on 7.10.83. The Deputy Chief Medical Officer, Ahmedabad, orally instructed the petitioner to obtain a certificate with regard to his medical fitness from the expert, Dr.Gautam Bhagat, Consultant Physician, Ahmedabad. The petitioner was declared to be medically fit by Dr.Gautam Bhagat and his fitness report was submitted by the said doctor to the Deputy Chief Medical Officer of the Commission, vide his confidential letter dated 10th October 1983. The petitioner though was certified to be medically fit for the post by Dr.Gautam Bhagat, from whom he was directed to take the medical fitness report by the Deputy Chief Medical Officer of the Commission, but to his utter surprise, under the order dated 15th October 1983, his appointment has been cancelled on the ground that he has been declared medically unfit by the Deputy Chief Medical Officer. After receipt of the order dated 15th October 1983, the petitioner approached to the Civil Surgeon, Civil Hospital, Ahmedabad, and also the Resident Medical Officer, Sheth V.S. General Hospital, Ahmedabad. A copy of the certificates which have been given by the aforesaid two doctors has been filed by the petitioner as annexure 'F' to the Special Civil Application. The

petitioner preferred an appeal against the order dated 15th October 1983 to the respondent No.3. One of the contentions raised in the appeal was that he has been found fit and suitable for the post of Assistant Technician (Production) by three doctors, namely, the Civil Surgeon of Civil Hospital, the Resident Medical Officer of V.S. Hospital and the expert named by the Deputy Chief Medical Officer of the Commission itself. The Appellate Authority referred the matter back to the Deputy General Manager, Ahmedabad, vide its letter dated 15th December 1983 for reconsideration. The respondent No.4, on receipt of the matter from respondent No.3 for reconsideration, sent the case papers of the petitioner regarding medical fitness to the Civil Surgeon, Civil Hospital, Ahmedabad. The petitioner was called for medical rechecking by the said doctor vide letter dated 27th January 1984. The petitioner has come up with the case before this Court in this Special Civil Application that the Civil Surgeon, Civil Hospital, Ahmedabad, found the petitioner medically fit for appointment to the post of Assistant Technician (Production) on medical re-examination. Thereafter, the case papers of the petitioner were referred to the Resident Medical Officer, Sheth V.S. General Hospital, Ahmedabad, who also found the petitioner medically fit. In spite of the aforesaid facts, the petitioner's grievance is that the respondents have not issued any appointment order for the post of Assistant Technician (Production). Hence this Special Civil Application by the petitioner before this Court.

4. The respondent has filed affidavit-in-reply opposing the admission which has been sworn by Shri C.V. Sekharan, Administrative Officer (Personnel and Administration), Oil & Natural Gas Commission, Ahmedabad. The petitioner filed affidavit-in-rejoinder. Thereafter the respondent has filed affidavit in sur-rejoinder opposing admission which has been sworn by the officer aforesaid of the Commission. Further affidavit has been filed by the petitioner to which the same officer has given further affidavit-in-reply. Numerous documents have also been filed enclosed to the said affidavit. The respondent No.5, the Deputy Chief Medical Officer of the Commission at Ahmedabad has also filed reply, to which the petitioner filed further rejoinder. Lastly, the Commission has filed affidavit of Dr.Gautam Bhagat. The petitioner filed an affidavit alongwith a copy of the certificate issued by Dr.Bhagat, way back on 30th January 1984, but the Court has taken original certificate from the petitioner to ascertain the correctness of that certificate. This Court has called Dr.Bhagat in the Court. Dr.Bhagat has appeared in the Court and has

admitted the certificate dated 30th January 1984 given by him to the petitioner.

5. The learned counsel for the petitioner contended that three doctors, namely, Civil Surgeon of Civil Hospital, Resident Medical Officer of Sheth V.S. General Hospital, and expert Dr. Bhagat have opined in favour of the petitioner, but the respondent has not given him appointment. It has next been contended that the matter was sent for reexamination by the Appellate Authority and though again the Civil Surgeon and Resident Medical Officer opined the petitioner to be medically fit, the Deputy Chief Health and Medical Officer of the Commission has certified him to be unfit. That shows how arbitrarily that doctor has acted. Lastly it has been contended by the learned counsel for the petitioner that the Appellate Authority should have decided the matter afresh after receiving the report of Dy. Chief Medical Officer of the Commission, which has not been done in the present case. On the other hand, the learned counsel for the respondent contended that the offer of appointment contains a specific term that the appointment is subject to production of certificate of medical fitness from the Deputy Chief Medical Officer of the Commission at Ahmedabad and as such his opinion is final and it has to be accepted. Though the Civil Surgeon of Civil Hospital or the Resident Medical Officer of V.S. Hospital or may be Dr. Gautam Bhagat have given some opinion in favour of the petitioner, but the final opinion, in the matter, does lie with the Deputy Chief Medical Officer and he opined that the petitioner is not medically fit and as such the petitioner cannot be and should not be given appointment. It has next been contended that it is prerogative of the respondent to give the appointment to the petitioner when he was found to be medically unfit by the Deputy Chief Medical Officer of the Commission and as such there is no case of any infringement of legal or fundamental right of the petitioner which can be enforced by this Court sitting under Article 226 of the Constitution of India. It was a case where the petitioner was given only offer of appointment with stipulation that the appointment is subject to production of medical certificate of medical fitness from the Deputy Chief Medical Officer of the Commission. When this condition was not fulfilled, then there is no question of any concluded appointment in favour of the petitioner.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

7. The learned counsel for the respondent does not

dispute that the petitioner filed an appeal before the respondent No.3 against the impugned order and the Appellate Authority has sent the matter to respondent No.4 for reconsideration. It is also not in dispute that the respondent No.4 referred the matter to respondent No.5, who in turn referred the same to the Civil Surgeon, Civil Hospital, Ahmedabad, as well as the Resident Medical Officer, Sheth V.S. General Hospital, Ahmedabad. The learned counsel for the respondent further does not dispute that the appeal filed by the petitioner before the Appellate Authority (respondent No.3 herein) has not been decided on merits. The learned counsel for the respondent also does not dispute that the opinion given regarding medical fitness for the job by the Deputy Chief Medical Officer of the Commission was not final so far as the respondent No.3 is concerned. The Appellate Authority could have interfered in the matter and could have decided the matter on merits.

8. On the record of Special Civil Application, there are medical examination reports of the petitioner of different doctors, the details of which are as under:

- (i) Medical Examination Report dated 22.10.83 of Civil Surgeon, Civil Hospital, Ahmedabad In this report, the Medical Officer concerned opined that the petitioner is fit for employment. (Annexure F)
- (ii) Next report comes from the Civil Surgeon and Deputy Director of Medical Services, Head Quarter, Ahmedabad, dated 13th February 1984. In this report also, the petitioner was reported to be medically fit, but for the reasons best known to the Doctor, the matter has been left to be decided by the Deputy Chief Medical Officer as to the acceptability of the candidate in the Department (Annexure I).
- (iii) The medical certificate of Resident Medical Officer of V.S. Hospital wherein the petitioner has been reported to be fit for the job. (Annexure II)
- (iv) Report of Dr.Gautam Bhagat dated 10th October 1983 wherein the petitioner has been reported to be medically fit. (Page 69)
- (v) Report of Dr.Gautam Bhagat dated 30th January 1984 wherein the petitioner was stated to be medically fit. (Page 97)

9. In support of its case, the Commission has filed affidavit of Dr. Bhagat to justify its action, not to give appointment to the petitioner. After going through the documents, i.e. the medical certificates and the affidavit of Dr. Bhagat, I am satisfied that the commission has not acted fairly and impartially in the matter. In the affidavit, Dr. Bhagat has opined that a part of petitioner's lung has been removed and therefore the ventilatory capacity of lung has diminished and that the petitioner's lung functions were considerably less than what is expected from him if he was normal person and had not undergone operation. But he has nowhere opined that the petitioner is not medically fit for the post of Assistant Technician (Production). Dr. Bhagat has given some scientific data of FEV₁/FVC ratio, but it is not his conclusive opinion that the petitioner is not medically fit for the post of Assistant Technician (Production) in the Commission. Moreover, this affidavit of Dr. Bhagat cannot be considered to be gospel truth as earlier he opined that the ratio of FEV₁/FVC of the petitioner falls within normal limits. This opinion given earlier by Dr. Bhagat has been given a somersault by saying that it does not mean that the present condition of the petitioner is normal. Way back on 30th January 1984, this very doctor has found the petitioner physically fit. Earlier also, before re-reference, both the Civil Surgeon and the Resident Medical Officer reported him to be medically fit. On the basis of medical reports of Civil Surgeon, Resident Medical Officer, both first report and after re-reference, and the affidavit of Dr. Bhagat, I am satisfied that the petitioner's case has not been fairly and impartially dealt with. The Deputy Chief Medical Officer of the Commission after re-examination of the petitioner, has not given an explanation in the form of his opinion as to why he considered the petitioner to be medically unfit to be appointed on the said post.

10. This Court will not permit the respondent to do injustice to the petitioner but at the same time, in view of these opinion of doctors, this Court will not give direction to the respondent to give appointment to the petitioner on the post of Assistant Technician (Production). In the facts and circumstances of the case, interest of justice will be met in case this writ petition is disposed of with directions that the Commission may make a request to the Incharge, Civil Hospital, Ahmedabad, to constitute a medical Board for examination of the petitioner with reference to his medical fitness for the post of Assistant Technician

(Production) and it is expected of the Incharge, Civil Hospital, Ahmedabad, that on receipt of such requisition from the Commission, he will constitute a medical Board for medical examination of the petitioner for ascertaining his fitness on the said post. This requisition may be sent by the Commission within a period of 15 days from the date of receipt of certified copy of this judgment. The requisition may be sent, both by registered post as well as by personal messenger. On receipt of this request from the Commission, the Incharge of Civil Hospital, Ahmedabad, shall constitute a medical Board within a reasonable time and shall see that all the formalities are completed within a period of one month from the date of receipt of requisition from the Commission. The petitioner shall present himself for examination by the medical Board on the fixed date for the purpose of medical examination by the Board. In case the opinion of the medical Board goes against the petitioner, then there is no question of giving appointment to the petitioner, but in case the opinion of the medical Board goes in favour of the petitioner, i.e. the petitioner is found to be medically fit for the said post by the Board, then the respondent shall give appointment to the petitioner. However, the petitioner shall not be entitled for any backwages for the intervening period. The petitioner shall be entitled for all other consequential benefits, i.e. the notional fixation, revision of pay scale etc. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)